



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 210907-0179]

RIN 0648-BH72

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Electronic Reporting for Federally Permitted Charter Vessels and Headboats in Gulf of Mexico Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; delay of effective date.

SUMMARY: NMFS further delays the effective date for previously approved vessel location tracking requirements applicable to an owner or operator of charter vessel or headboat for which NMFS has issued a valid Federal charter vessel/headboat permit for federally managed reef fish or coastal migratory pelagic (CMP) species in the Gulf of Mexico (Gulf). This delay of the effective date will provide additional time for NMFS to complete testing of an additional vessel location tracking unit and provide additional time for litigation challenging these requirements to progress.

DATES: The effective date for the amendments to §§ 622.26(b)(5) and 622.374(b)(5)(ii) through (v) that published July 21, 2020 (85 FR 44005), and delayed

indefinitely, made effective December 13, 2021, on September 14, 2021 (86 FR 51014), is delayed until March 1, 2022.

ADDRESSES: Electronic copies of the Gulf For-hire Reporting Amendment may be obtained from *www.regulations.gov* or the Southeast Regional Office website at *https://www.fisheries.noaa.gov/southeast/et*.

The Gulf For-hire Reporting Amendment includes an environmental assessment, regulatory impact review, Regulatory Flexibility Act analysis, and fishery impact statement.

The final rule that published on July 21, 2020 (85 FR 44005), and other related rulemaking documents, may be obtained from *www.regulations.gov*, by searching "RIN 0648-BH72."

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, NMFS Southeast Regional Office, telephone: 727-824-5305, or email: *rich.malinowski@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS is delaying the effective date to March 1, 2022, for the previously approved vessel location tracking requirements, hereafter referred to as vessel monitoring system (VMS) requirements, that apply to an owner or operator of charter vessel or headboat for which NMFS has issued a valid Federal charter vessel/headboat permit for federally managed reef fish or CMP species in the Gulf.

The VMS requirements delayed by this final rule are based on the Gulf For-hire Reporting Amendment, which includes amendments to the Fishery Management Plans (FMPs) for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP) and Coastal Migratory Pelagic (CMP) Resources of the Gulf of Mexico and Atlantic Region (CMP FMP). The CMP fishery in the Gulf is managed under the CMP FMP, an FMP jointly developed by the Gulf of Mexico Fishery Management Council (Gulf Council) and the South Atlantic Fishery Management Council. The Gulf reef fish fishery is managed under the Reef Fish FMP, which is developed by the Gulf Council. These FMPs are implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On July 21, 2020, NMFS published the final rule to implement the Gulf For-hire Reporting Amendment (85 FR 44005). That final rule summarized the management measures described in the Gulf For-hire Reporting Amendment and implemented by NMFS. However, the July 21, 2020, final rule delayed indefinitely the effectiveness of VMS requirements in 50 CFR 622.26(b)(5) and 622.374(b)(5)(ii) through (v), which require the use of a cellular or satellite VMS, to allow time for NMFS to test and approve cellular VMS units.

NMFS has now approved two cellular VMS units and continues to test a third unit. Therefore, on September 14,

2021, NMFS published in the **Federal Register**, a final rule announcing a December 13, 2021, effective date for the VMS requirements (86 FR 51014). On October 4, 2021, NMFS received a petition to delay further the effective date of these requirements until March 22, 2022. The petitioners are plaintiffs in a lawsuit that challenges several aspects of the July 21, 2020, rule, including the VMS requirements (Mexican Gulf Fishing Co. v. Dep't of Commerce, Civil Action No. 2:20-cv-2312 (E.D. La)). Written arguments in that litigation will be complete in early November and the petitioners request the delay to allow time for the court to issue a ruling. NMFS has determined that it is appropriate to delay the effective date of the VMS requirements until March 1, 2022. This will allow time for NMFS to finish testing the third cellular VMS unit, which will provide more options to permit holders, and additional time for the litigation to progress, but will also ensure that vessels are equipped with these units before the busy spring break season begins. NMFS anticipates an increase in Gulf for-hire trips during the March 2022 spring break season but will not have the ability to effectively validate those trips if the VMS requirements are not implemented by March 1, 2022. Therefore, NMFS is delaying the effective date of 50 CFR 622.26(b)(5) and 622.374(b)(5)(ii) through (v) until March 1, 2022.

Administrative Procedure Act

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b) (A) . Alternatively, the NMFS Assistant Administrator (AA) also finds that there is good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b) (B) , because such procedures on this temporary delay are unnecessary and contrary to public interest. Such procedures are unnecessary because this final rule only delays the effective date of VMS requirements that NMFS already provided prior notice and an opportunity for public comment in the July 21, 2020, final rule (see **DATES** section). Such procedures would also be contrary to the public interest because the VMS requirements currently go into effect on December 13, 2021, and there is a need to immediately implement this action to delay the effective date of the final rule at 86 FR 51014 (September 14, 2021) and to provide notice of the delay to affected fishery participants.

For these same reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d) (3) .

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 28, 2021.

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Deputy Assistant Administrator for Regulatory
Programs,
National Marine Fisheries Service.

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